

MINUTE ITEM

4. (AMENDMENTS TO TITLE 2, CALIFORNIA ADMINISTRATIVE CODE - W. O. 2705.)

Following presentation of Calendar Item 27 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

AFTER PROCEEDINGS HAD, IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT (GOVERNMENT CODE, TITLE 2, DIVISION 3, PART 1, CHAPTER 4), AND PURSUANT TO THE AUTHORITY VESTED BY SECTION 6108 OF THE PUBLIC RESOURCES CODE, THE STATE LANDS COMMISSION HEREBY AMENDS AND ADOPTS ITS REGULATIONS IN TITLE 2, CALIFORNIA ADMINISTRATIVE CODE, AS FOLLOWS:

ADOPTS NEW SECTION 1913, TO READ:

Joint Bidding. In every case of joint bidding, the names of all persons, firms, or corporations interested in a particular joint bid shall be specified.

If a general or limited partnership shall join in the making of a joint bid, in addition to the specification of the name of such partnership, the names and addresses of the general partners responsible for the terms of the lease shall accompany the bid.

In the case of a corporation joining in a bid, the names of the president, vice-president, secretary, assistant secretary, other officer, attorney-in-fact or agent authorized to enter into contracts for the corporation, the location of the corporation's principal office, and the state of incorporation of the corporation shall accompany the bid.

All persons, firms, or corporations who will participate in management, operation or control under the joint bid shall be specified in the bid. Others need not be specified.

Nothing herein contained shall be construed to permit a prospecting permit or lease, or any interest therein, to be held by any person not qualified under Public Resources Code Sections 6801(a), (b) and (c).

ADOPTS NEW SECTION 1915, TO READ:

Bidding by Partnership. In the event of submittal of a bid by a partnership, either jointly or individually, the bidder or bidders shall submit a sworn statement with the bid, in the form of an affidavit or certified statement, that each and every limited partner is duly qualified under Section 6801 of the Public Resources Code.

THIS ORDER SHALL TAKE EFFECT ON THE THIRTIETH DAY AFTER ITS FILING WITH THE SECRETARY OF STATE AS PROVIDED IN SECTION 11422 OF THE GOVERNMENT CODE.

THE EXECUTIVE OFFICER IS AUTHORIZED TO FILE THIS AMENDMENT OF TITLE 2, CALIFORNIA ADMINISTRATIVE CODE, WITH THE SECRETARY OF STATE.

Attachment

Calendar Item 27 (9 pages)

3869

CALENDAR ITEM

MISCELLANEOUS

27.

(AMENDMENTS TO TITLE 2, CALIFORNIA ADMINISTRATIVE CODE - W. O. 2705.)

On October 8, 1957 (Minute Item 18, pages 3567-3579) the proposed adoption of Sections 1913, 1914, and 1915 of Title 2 of the California Administrative Code was re-referred to the staff for further consideration. The form of these proposed additions as published pursuant to the requirements of the Government Code is attached as Exhibit "A". Pursuant to the re-referral, the respective sections have been reviewed with the office of the Attorney General and with all interested oil and gas industry organizations. After receipt from various industry organizations of diverse supporting and controverting statements relative to the proposed rules, the informal opinion of the Attorney General was requested as to the form of rules and regulations which the Commission might consider for adoption within the scope of the published notice and the limitation of the applicable statutes. A copy of the informal opinion of the office of the Attorney General relative to proposed Sections 1913, 1914, and 1915 of Title 2 of the California Administrative Code is attached as Exhibit "B". The conclusions in the aforesaid opinion are repeated here:

"(1) As to the proposed Section 1913, this Section is ready for Commission action.

"There is one modification suggested by counsel for The Texas Company, which modification is legally unobjectionable but is purely a matter for the Commission's discretion".

The modification suggested consists of an addition to the third paragraph of Section 1913 to allow an attorney-in-fact or agent authorized to enter into contracts to execute a bid proposal in addition to the previously suggested authorization of a bid execution by an officer or officers of a corporation authorized to enter into contracts for the corporation.

"That portion of the proposed Rule 1913 relating to the disclosure of contractual relationships is controversial. Whereas we believe that the adoption of the proposed rule in its published form would be legally proper and defensible, we have suggested that the fourth paragraph of Section 1913 be re-written for purposes of clarification. However, we recognize that it is within the discretion of the Commission to require disclosure of the identities of all persons or entities participating in management, operation or control under the joint bid, together with those having any financial interest in the joint bid."

Revised language relating to the disclosure of contractual relationships

MISCELLANEOUS 27. (CONTD.)

detailed in the fourth paragraph of the proposed Section 1913 is suggested as follows:

"All persons, firms, or corporations who will participate in management, operation or control under the joint bid shall be specified in the bid. Others need not be specified".

"(2) The proposed Section 1914 also is ready for Commission action. As published, the Section is consistent with our evaluation of the law. Whether it is necessary is a policy determination for the Commission. Our opinion is that it is mere surplusage."

"(3) The proposed Section 1915 is ready for Commission action and apparently no opposition has been voiced thereto. The statutory formalities have been followed and this rule is consistent with law."

IT IS RECOMMENDED THAT THE COMMISSION ADOPT THE FOLLOWING:

AFTER PROCEEDINGS HAD, IN ACCORDANCE WITH THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT (GOVERNMENT CODE, TITLE 2, DIVISION 3, PART 1, CHAPTER 4), AND PURSUANT TO THE AUTHORITY VESTED BY SECTION 6108 OF THE PUBLIC RESOURCES CODE, THE STATE LANDS COMMISSION HEREBY AMENDS AND ADOPTS ITS REGULATIONS IN TITLE 2, CALIFORNIA ADMINISTRATIVE CODE, AS FOLLOWS:

ADOPTS NEW SECTION 1913, TO READ:

Joint Bidding. In every case of joint bidding, the names of all persons, firms, or corporations interested in a particular joint bid shall be specified.

If a general or limited partnership shall join in the making of a joint bid, in addition to the specification of the name of such partnership, the names and addresses of the general partners responsible for the terms of the lease shall accompany the bid.

In the case of a corporation joining in a bid, the names of the president, vice-president, secretary, assistant secretary, other officer, attorney-in-fact or agent authorized to enter into contracts for the corporation, the location of the corporation's principal office, and the state of incorporation of the corporation shall accompany the bid.

All persons, firms, or corporations who will participate in management, operation or control under the joint bid shall be specified in the bid. Others need not be specified.

Nothing herein contained shall be construed to permit a prospecting permit or lease, or any interest therein, to be held by any person not qualified under Public Resources Code Sections 6801(a), (b) and (c).

MISCELLANEOUS 27. (CONTD.)

ADOPTS NEW SECTION 1915, TO READ:

Bidding by Partnership. In the event of submittal of a bid by a partnership, either jointly or individually, the bidder or bidders shall submit a sworn statement with the bid, in the form of an affidavit or certified statement, that each and every limited partner is duly qualified under Section 6801 of the Public Resources Code.

THIS ORDER SHALL TAKE EFFECT ON THE THIRTIETH DAY AFTER ITS FILING WITH THE SECRETARY OF STATE AS PROVIDED IN SECTION 11422 OF THE GOVERNMENT CODE.

THE EXECUTIVE OFFICER IS AUTHORIZED TO FILE THIS AMENDMENT OF TITLE 2, CALIFORNIA ADMINISTRATIVE CODE, WITH THE SECRETARY OF STATE.

Attachments

Exhibit "A"

Exhibit "B"

EXHIBIT "A"

- (1) Adopt new Section 1913, Title 2 of the Administrative Code, to read:

1913--Joint Bidding

In every case of joint bidding, the names of all persons, firms, or corporations interested in a particular joint bid shall be specified.

If a general or limited partnership shall join in the making of a joint bid, in addition to the specification of the name of such partnership, the names and addresses of the general partners to be responsible for the performance of the terms of the lease shall accompany the bid.

In the case of a corporation joining in a bid, the names of the president, of the secretary, or of the officer authorized to enter into contracts for the corporation, the location of the corporation's principal office, and the state of incorporation of the corporation shall accompany the bid.

All persons, firms, or corporations who are to assume a contractual relationship with the State by virtue of a particular joint bid shall be specified in the bid. Others, not participating in management, operation, or control under the joint bid, need not be specified, irrespective of investments or contractual relationship with persons or entities other than the State.

Nothing herein contained shall be construed to permit a prospecting permit or lease, or any interest therein, to be held by any person not qualified under Public Resources Code Sections 6801(a), (b) and (c).

- (2) Adopt new Section 1914, Title 2 of the Administrative Code, to read:

1914--Forfeiture

For the purposes of Public Resources Code Section 6802, an interest held in violation of Chapter 3, Part 2, Division 6 of the Public Resources Code, is any interest held by any one or more persons, associations of persons, firms, or corporations other than:

(a) Persons or associations of persons who are citizens of the United States or who have declared their intention of becoming such, or who are citizens of any country, dependency, colony, or province, the laws, customs, and regulations of which permit the grant of similar or like privileges to citizens of the United States.

(b) Any corporation or corporations organized and existing under and by virtue of the laws of the United States or of any state or territory thereof; or any corporation or corporations 90 percent or more of the shares of which are owned by persons eligible to hold a lease or

EXHIBIT "A". (CONTD.)

permit under subdivision (a) or (c) of this section; or any corporation or corporations 90 percent or more of the shares of which are owned either by a corporation eligible to hold a lease or permit hereunder, or by any combination of such eligible persons or corporations, or both.

(c) Any alien person entitled thereto by virtue of any treaty between the United States and the nation or country of which the alien person is a citizen or subject.

Any interest under a joint bid held by one or more persons, associations of persons, firms, or corporations, held in violation of Section 6801, Subdivision (d) of the Public Resources Code, is subject to forfeiture under Section 6802 of said code.

- (3) Adopt new Section 1915, Title 2 of the Administrative Code, to read:

1915--Bid by Partnership

In the event of submittal of a bid by a partnership, either jointly or individually, the bidder or bidders shall submit a sworn statement with the bid, in the form of an affidavit or certified statement, that each and every limited partner is duly qualified under Section 6801 of the Public Resources Code.

EXHIBIT "B"

STATE OF CALIFORNIA
Los Angeles 12

Inter-Departmental Communication

Francis J. Hortig,
Executive Officer
To: State Lands Commission
302 State Building
Los Angeles 12, California
From: Department of Justice

Date: February 27, 1958
File No. Your Nos. W.O. 396.71
and W.O. 2705
Subject: Proposed Amendments
to Title 2, California Admini-
strative Code

In your letter of December 4, 1957, your file W.O. 396.71 and W.O. 2705, you advised us that the State Lands Commission had published notice of intention to adopt or amend Sections 1913, 1914 and 1915 of Title 2 of the California Administrative Code. You attached to your communication a copy of the "Notice of Proposed Changes of the Regulations of the State Lands Commission" dated October 31, 1957 relating to the aforementioned rule changes. Thereafter you inquired.

"In consideration of the diverse supporting and controverting statements relative to proposed Rules 1913, 1914 and 1915, will you please review and report as to the form of these rules and regulations which the Commission may consider for adoption within the scope of the published notice and the limitation of the applicable statutes."

Proposed Section 1913

You will recall that an informal opinion dated September 30, 1957, written by this office for State Senator Richard Richards, previously has been furnished to the State Lands Commission, and said informal opinion was attached as Exhibit "B" to Calendar Item 18 on the Commission's October 8, 1957 agenda. In the interest of brevity, we shall not repeat the matters therein contained but the attention of the Commission is respectfully directed to the aforesaid informal opinion of September 30, 1957 already on file with the Commission. Suffice it to say that, for the reasons therein expressed, this office has concluded that should the State Lands Commission desire to adopt Rule 1913 as advertised, such rule would be consistent with statute.

In reaching the conclusion hereinabove stated, we attributed considerable weight to the establishment by the Commission of a practical procedure best calculated to achieve the Legislative objectives in enacting Section 6801 of the Public Resources Code. However, we cannot refrain from mentioning that the proposed Rule 1913 sets forth what we regard as minimum requirements, and that it is within the discretion of the State Lands Commission to adopt more stringent requirements than those embodied in the proposed Section 1913.

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So far as this office is aware, no objections have been received by the Commission with respect to the first three paragraphs of the proposed Section 1913, except that counsel for the Texas Company has suggested that paragraph three thereof be modified slightly to allow specification of the names of an attorney-in-fact, or agent authorized to enter into contracts to accompany the bid. This paragraph as originally advertised required the name or names of the officer or officers of the corporation authorized to enter into contracts for the corporation. There is no objection by this office to this suggested modification should the Commission desire to make the same.

There has been objection voiced to the fourth paragraph of the proposed Section 1913, which paragraph reads as follows:

"All persons, firms, or corporations who are to assume a contractual relationship with the State by virtue of a particular joint bid shall be specified in the bid. Others, not participating in management, operation, or control under the joint bid, need not be specified, irrespective of investments or contractual relationship with persons or entities other than the State."

In the previously mentioned informal opinion of September 30, 1957 we stated that we believe the better view to be that a mere contractual relationship between the bidder and a third party, whereby said third party in no way participates in management, operation or control under the joint bid, does not require disclosure of that contracting third party's name. We still believe this to be the better view. However, if the Commission desires to retain the substantive content of the above quoted fourth paragraph of this proposed rule, it is suggested that said paragraph be revised to read as follows:

"All persons, firms, or corporations who will participate in management, operation or control under the joint bid shall be specified in the bid. Others need not be specified."

We have recommended the deletion of the sentence that: "All persons, firms, or corporations who are to assume a contractual relationship with the State by virtue of a particular joint bid shall be specified in the bid" for the reason that the same is covered by the first paragraph of the proposed Section 1913. We further believe that the hereinabove suggested revision eliminates some awkwardness from, and more clearly expresses the intention of, the fourth paragraph in the original draft. This change of phraseology, if approved by the Commission, would not necessitate re-publication of the proposed rule.

However, we previously recognized, and yet are cognizant, that a tenable argument may be made that all contractual interests by a third party must be disclosed in the case of a joint bid. This contrary argument is the result of the Legislature's having failed to define with particularity that which is embraced within the phrase "interested in a particular joint bid" as that term is used in Public Resources Code Section 6801(d). Consequently, we recognize that the Commission, in its discretion, properly might also require the disclosure of the name or names of any and all third parties financially interested in a joint bid.

Proposed Section 1914

The statutory formalities necessary to adopt the proposed Section 1914 have been observed.

So far as the lawfulness of this particular proposed regulation is concerned, and for the reasons heretofore expressed in the aforementioned informal opinion of this office to Senator Richards under date of September 30, 1957, it is our opinion that Section 1914, as advertised on October 13, 1957, is consistent with statute.

Separate and apart from the lawfulness of this regulation, the desirability of adopting Section 1914 has been questioned. Specifically, it has been urged by an objector to the adoption of this proposed section that said Section 1914 is unnecessary. Although we realize that the question as to whether this proposed section is or is not deemed to be necessary is exclusively a policy determination for the State Lands Commission to make, our opinion is that the proposed Section 1914 is mere surplusage.

Proposed Section 1915

The proposed Section 1915, as published, stemmed from a suggestion made by this office in the informal opinion of September 30, 1957 heretofore discussed. You will recall that the proposed Rule 1913 requires disclosure of the names and addresses of general partners, if a general or limited partnership joins in the making of a joint bid. Section 1915 is designed to require a sworn statement that each and every limited partner in a partnership is duly qualified under Public Resources Code Section 6801. Apparently, there has been no opposition filed to the proposed Section 1915. In our opinion, the procedural statutory formalities have been observed with respect to this proposed rule and we deem it to be consistent with law.

CONCLUSION

In recapitulation, our conclusions may be stated as follows:

(1) As to the proposed Section 1913, this Section is ready for Commission action.

There is one modification suggested by counsel for The Texas Company, which modification is legally unobjectionable but is purely a matter for the Commission's discretion.

That portion of the proposed Rule 1913 relating to the disclosure of contractual relationships is controversial. Whereas we believe that the adoption of the proposed rule in its published form would be legally proper and defensible, we have suggested that the fourth paragraph of Section 1913 be rewritten for the purposes of clarification. However, we recognize that it is within the discretion of the Commission to require disclosure of the identities of all persons or entities participating in management, operation or control under the joint bid, together with those having any financial interest in the joint bid.

(2) The proposed Section 1914 also is ready for Commission action. As published, the Section is consistent with our evaluation of the law.

Francis J. Hortig, Executive Officer

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Whether it is necessary is a policy determination for the Commission. Our opinion is that it is mere surplusage.

(3) The proposed Section 1915 is ready for Commission action and apparently no opposition has been voiced thereto. The statutory formalities have been followed and this rule is consistent with law.

If we can be of any further service, please do not hesitate to call upon us.

HOWARD S. GOLDIN,
Deputy Attorney General

HSG:omg